Syllabus

Class meetings: Tuesdays and Thursdays, 3:30 PM to 5:00 PM,

Faculty: Justin Steil
Room 10-401
steil@mit.edu

Office hours: Please sign up electronically: dusp.mit.edu/officehours.

Teaching Assistant:

Course Description:

This course examines the intersection of race, place, and law by studying the how the use of land is controlled. It begins with a brief introduction to the U.S. legal system. It introduces some basic concepts in property law and then focuses on the regulation of land use. It examines why and when government regulation, rather than private market ordering, might be necessary to control land use patterns. It examines the rights of owners of land and the types of regulatory and market-based tools that are available to control land use in the United States and provides a framework for evaluating these tools. Issues discussed include zoning ordinances, subdivision creation, land assembly, and takings. It then presents common legal challenges to land use regulations and decisionmaking. The course introduces students to basic principles of civil rights and anti-discrimination law and focuses on the role of the land use regulatory system in perpetuating or addressing racial inequality, including topics such as exclusionary zoning, residential segregation, and gentrification. The course concludes by considering land use regulation in relation to the powers of states and local governments and issues of racial and economic equity. In addition to looking at the law, the course examines economic and political theories relevant to the regulation of land and provides a survey of the relevant literature, with a focus throughout on foundational texts in critical race theory. The course explores three fundamental normative questions: who should control how land is used, how should they do it, and what are the implications of both of the prior questions for racial equity?
Class Participation:

This is a discussion-based, rather than lecture-based, course. Students should be well prepared to participate actively in class discussions, with well-supported arguments and should make an effort to build on and react to the arguments of classmates and faculty. The quality of your participation will make up 20% of your final course grade.

For each class the required readings include excerpts of several cases. You should be prepared to identify the legal question presented in each of those cases, the relevant facts, the court’s holding, and the reasoning used to support that holding. You are encouraged to read at least one of the recommended articles, which aim each week to have a mix of mainstream legal theory, critical race theory, and empirical analyses relevant to planning practice.

Assignments:

Requirements and grading are as follows:

• **In-class participation** (20%). Be prepared, make arguments supported by the readings, and listen to each other. In person attendance is expected at every class, unless extenuating circumstances are presented in advance. As is the norm in law schools, students should be prepared to be called on at any time and be able to present the legal questions, facts, holding, and reasoning for each of the assigned cases.

• **A brief weekly legal memo of not more than 600 words each** (45%). At the end of each class, we will present you with a fact pattern for the following class. The memo should 1) identify the legal issue; 2) present the relevant rule, either from the appropriate statute, case law, or combination of the two; 3) apply the rule to the facts presented; 4) conclude with a recommendation based on the rule application. You will be expected to submit one legal memo per week by 8:00 pm the night before class. No response paper is expected in the first or last weeks or the week of the midterm and you can choose not to submit in one week of your choice. Therefore, a total of 9 responses should be submitted. Two of these weekly assignments will take a different format, with one asking you to interpret a zoning code and a second asking you to draft a portion of a statute.

• **Midterm case decision** (15%). We will present you with a case, together with the briefs for the midterm. You will write a 1,000 word decision in the case, drawing on the cases reviewed in class and addressing the key arguments in the briefing.

• **Final brief** (10%) and **oral argument** (10%). In March, we will present you with a case for the final brief and oral argument. You will work in teams of two, jointly preparing a 1,200 word brief and each preparing for a 5 minute introductory oral argument and rebuttal. We will expect you to do your own legal research on LexisUniv in order to prepare the final brief. For the final two classes, we will have guest panels of judges and oral arguments in the two cases.

The following grading rubric will be applied to evaluate written submissions and oral arguments:

I) Does it accurately identify the legal issue? (20%)
   i. Does it appropriately state the question presented?

II) Does it accurately identify the relevant legal rule? (20%)
i. Does it identify the relevant statutes or cases and present the current state of the law?

III) Does it apply the rule appropriately to the facts? (20%)
i. Does it identify and engage with the relevant facts?
ii. Does it apply the rule appropriately to the facts?

IV) Does it present a clear conclusion? (20%)
i. Is the conclusion, decision, or recommendation clear?
ii. Is it appropriate in light of the relevant law and facts?

V) Does it present a compelling, well-structured argument? (20%)
i. Does it have a logical structure that supports the development of the thesis?
ii. Does it engage with counter-arguments and acknowledge weaknesses?
iii. Is the argument creative and original?

**Undergraduate Grading**
Undergraduates are encouraged to enroll! Undergraduate students will not need to complete the final brief and oral argument. In class participation will still count for 20% of the grade, the brief weekly memos will count for 65% of the grade with the opportunity to revise and resubmit any of them, and the midterm will count for 15% of the grade, with the opportunity to revise and resubmit the midterm when the graduate students submit their final brief.

**Grading Scale:**
Grades are assigned using the following scale:

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<th>Grade</th>
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**Late Submissions:**
All submissions should be submitted via Canvas. In the event that medical or other personal circumstances arise that interfere with your ability to complete assignments on time, extension requests can be made to the Office of the Dean of Graduate Education (http://odge.mit.edu) or Student Support Services (S3). If the ODGE or S3 decides that an extension is warranted, they will send a generic note that your assignment deadline should be extended without penalty. This policy is intended to preserve your privacy. Any assignment submitted after the deadline, without a request for an extension that was approved by ODGE or S3, will be marked down 5 points out of 100. Any assignment more than 3 hours late will be marked down a further 10 points.

**Writing Help:**
The WCC at MIT (Writing and Communication Center) offers free one-on-one professional advice from communication experts. The WCC is staffed completely by MIT lecturers. All have advanced degrees. All are experienced college classroom teachers of communication. All are all are
published scholars and writers. Not counting the WCC’s director’s years (he started the WCC in 1982), the WCC lecturers have a combined 133 years’ worth of teaching here at MIT (ranging from 4 to 24 years). The WCC works with undergraduate, graduate students, post-docs, faculty, staff, alums, and spouses. The WCC helps you strategize about all types of academic and professional writing as well as about all aspects of oral presentations (including practicing classroom presentations & conference talks as well as designing slides). No matter what department or discipline you are in, the WCC helps you think your way more deeply into your topic, helps you see new implications in your data, research, and ideas. The WCC also helps with all English as Second Language issues, from writing and grammar to pronunciation and conversation practice. The WCC is located in E18-233, 50 Ames Street. To guarantee yourself a time, make an appointment. To register with our online scheduler and to make appointments, go to https://mit.mywconline.com/. To access the WCC’s many pages of advice about writing and oral presentations, go to http://cmsw.mit.edu/writing-and-communication-center/. Check the online scheduler for up-to-date hours and available appointments.

**Academic Integrity:**

In this course, I will hold you to the high standard of academic integrity expected of all students at the Institute. I do this for two reasons. First, it is essential to the learning process that you are the one doing the work. I have structured the assignments in this course to enable you to gain a mastery of the course material. Failing to do the work yourself will result in a lesser understanding of the content, and therefore a less meaningful education for you. Second, it is important that there be a level playing field for all students in this course and at the Institute so that the rigor and integrity of the Institute’s educational program are maintained.

Violating the Academic Integrity policy in any way (e.g., plagiarism, unauthorized collaboration, cheating, etc.) will result in official Institute sanction. Possible sanctions include receiving a failing grade on the assignment or exam, being assigned a failing grade in the course, having a formal notation of disciplinary action placed on your MIT record, suspension from the Institute, and expulsion from the Institute for very serious cases.

Please review MIT’s Academic Integrity policy and related resources (e.g., working under pressure; how to paraphrase, summarize, and quote; etc.) and contact me if you have any questions about appropriate citation methods, the degree of collaboration that is permitted, or anything else related to the Academic Integrity of this course.

Fundamental to the academic work you do at MIT is an expectation that you will make choices that reflect integrity and responsible behavior. Honesty is the foundation of good academic work.

Do trust the value of your own intellect and credit others for their work. Do not copy ideas or phrases without citing them appropriately. Do not submit projects or papers that have been written for a previous class.

See [https://integrity.mit.edu/](https://integrity.mit.edu/)

**Safe and Equitable Learning Environment:**

MIT is dedicated to providing a safe and equitable learning environment for all students. Discrimination, sexual assault, and harassment are not tolerated by the Institute. You are encouraged to report any incidents to IDHR. This is important for the safety of the entire MIT community. Violence Prevention & Response’s hotline, 617-253-2300, provides 24/7 confidential
support. Please visit https://idhr.mit.edu/ for more information on reporting options and other resources.

MIT values an inclusive environment. I hope to foster a sense of community in this classroom and consider this classroom to be a place where you will be treated with respect. I welcome individuals of all backgrounds, beliefs, ethnicities, national origins, gender identities, sexual orientations, religious and political affiliations – and other visible and nonvisible differences. All members of this class are expected to contribute to a respectful, welcoming, and inclusive environment for every other member of the class. If this standard is not being upheld, please feel free to speak with me.

MIT is committed to the principle of equal access. Students who need disability accommodations are encouraged to speak with Disability and Access Services (DAS), prior to or early in the semester so that accommodation requests can be evaluated and addressed in a timely fashion. If you have a disability and are not planning to use accommodations, it is still recommended that you meet with DAS staff to familiarize yourself with their services and resources. Please visit the DAS website for contact information.

If you have already been approved for accommodations, class staff are ready to assist with implementation. Please let me know how I can implement any required accommodations.

**Student Support**

**Undergraduate Students: Student Support Services (S3)**

If you are dealing with a personal or medical issue that is impacting your ability to attend class, complete work, or take an exam, you should contact a dean in Student Support Services (S3). S3 is here to help you. The deans will verify your situation, provide you with support, and help you work with your professor or instructor to determine next steps. In most circumstances, you will not be excused from coursework without verification from a dean. Please visit the S3 website for contact information and more ways that they can provide support.

Website: [https://studentlife.mit.edu/s3](https://studentlife.mit.edu/s3)

**Graduate Students: GradSupport**

As a graduate student, a variety of issues may impact your academic career including faculty/student relationships, funding, and interpersonal concerns. In the Office of Graduate Education (OGE), GradSupport provides consultation, coaching, and advocacy to graduate students on matters related to academic and life challenges. If you are dealing with an issue that is impacting your ability to attend class, complete work, or take an exam, you may contact GradSupport by email at gradsupport@mit.edu or via phone at (617) 253-4860.

Website: [https://oge.mit.edu/development/gradsupport/](https://oge.mit.edu/development/gradsupport/)

**Land Acknowledgment**

MIT acknowledges Indigenous Peoples as the traditional stewards of the land, and the enduring relationship that exists between them and their traditional territories. The lands which MIT occupies are the traditional unceded territories of the Wampanoag Nation and the Massachusett Peoples. We acknowledge the painful history of genocide and forced occupation of these territories, as well as the ongoing processes of colonialism and dispossession in which we and our institution are implicated. Beyond the stolen territory which we physically occupy, MIT has long profited from the sale of federal lands granted by the Morrill Act, territories stolen from 82 Tribes including the
Greater and Little Osage, Chippewa, and Omaha Peoples.

As we honor and respect the many diverse Indigenous people connected to this land from time immemorial, we seek to Indigenize our institution and the field of planning, offer space, and leave Indigenous peoples in more empowered positions.

**Books:**
Course materials will be made available on Canvas.

**Recommended texts:**


Part I: Introduction to the Law (3)

I) The Constitution: An Introduction to US Law (Tuesday, February 1)

Required Readings:
The United States Constitution

Recommended Readings:

II) Legal Methods: Civil Procedure, How to Read a Case (Thursday, February 3)

Required readings:


Recommended Readings:
Derrick A. Bell, Jr., Brown v. Board of Education and the Interest-Convergence Dilemma. 93 Harv. L. Rev. 3 (1980).

III) Legal Research Workshop (Tuesday, February 8)

***Seminar on legal research with Jen Greenleaf: ***

Part II: Concepts in Real Property (6)

IV) Theories of Law and Property (Thursday, February 10)

Required readings:
State v. Schack, 58 N.J. 297 (1971)
Cheryl I. Harris, Whiteness as Property. 106 Harv. L. Rev. 8 (1993)

Recommended Readings:
Harold Demsetz, Toward a Theory of Property Rights. 57 Am. Econ. Rev. 2 (1967)
K-Sue Park, Race and Property Law, in The Oxford Handbook of Race and Law in the United States (Devon Carbado, Khiara Bridges & Emily Houh eds., Oxford University Press forthcoming

V) Nuisance (Tuesday, February 15)

Required readings:


Recommended readings:

VI) Adverse Possession and Landlord Tenant Law (Thursday, February 17)

Required readings:


Recommended readings:
Margaret Jane Radin, Property and Personhood. 34 Stanford L. Rev. 5 (1982)

VII) Takings and Regulatory Takings (Thursday, February 24)

Required readings:
Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)
Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)

Other Resources:
Hadacheck v. Sebastian, 239 U.S. 394 (1915)
Penn Coal v. Mahon, 260 U.S. 393 (1922)

Recommended readings:

VIII) Regulatory takings (Tuesday, March 1)

Required readings:
Knick v. Township of Scott, 588 U.S. 1 (2019)

Other Resources:

Recommended readings:

IX) Exactions (Thursday, March 3)

Required readings:
Dolan v. City of Tigard, 512 U.S. 374 (1994)
Other Resources:
Pennell v. City of San Jose, 485 U.S. 1 (1988)
Goss v. City of Little Rock, 90 F.3d 306 (8th Cir. 1996)
Ehrlich v. City of Culver City, 12 Cal.4th 854 (1996)
Volusia County v. Aberdeen at Ormond Beach, 760 So.2d 126 (2000)

Recommended readings:

Part III: Land Use Regulations (7)

X) Law, Planning, and Politics (Tuesday, March 8)

Required Readings:
Euclid v. Ambler, 272 U.S. 365 (1926)
Nectow v. City of Cambridge, 277 U.S. 183 (1928)

Patricia Williams, On Being the Object of Property. 14 Signs 1 (1988).

Other Resources:
Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962)

Recommended Readings:

XI) Zoning: Judicial or Legislative Act? (Thursday, March 10)

Required readings:
State v. City of Rochester, 268 N.W.2d 885 (Minn. 1978)
Haines v. City of Phoenix, 151 Ariz. 286 (1986)
State ex rel. Stoyanoff v. Berkley, 458 S.W.2d 305 (Mo. 1970)

Other resources
MA State Zoning Enabling Act, M.G.L. Chapter 40A
https://malegislature.gov/laws/generallaws/parti/titlevii/chapter40a
An Act Enabling Partnerships for Growth, Chapter 358 of the Acts of 2020:
https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter358
Cambridge Zoning Map, Zoning Ordinance (skim)
https://www.cambridgema.gov/cdd/planud/masterplan

Recommended readings:

XII) Challenges to Land Use Regulations (Tuesday, March 15)

Required readings:
Substantive due process
Moore v. City of East Cleveland, 431 U.S. 494 (1977)
Procedural due process

Recommended readings:

XIII) Challenges to Land Use Regulations (Thursday, March 17)

Required readings:
Equal protection
First Amendment
Other Resources:
Valley View Industrial Park v. City of Redmond, 107 Wn.2d 621 (Wash. 1987)

Recommended Readings:
Perin, Constance. Everything in its place: Social order and land use in America. Princeton University Press, 2014. Read Chapter 1 (pp. 3-31) and Chapter 6 (pp. 210-219).

XIV) Challenges to Administrative Flexibility in Land Use (Tuesday, March 29)

Required readings:
Matthew v. Smith, 707 S.W.2d 411 (Miss. 1986)
Commons v. Westwood Zoning Board of Adjustment, 410 A.2d 1138 (N.J. 1980)
Gladdon v. DC Board of Zoning Adjustment, 659 A.2d 249 (D.C. 1995)


Recommended readings:

XV) Challenges to Legislative Zoning Changes (Thursday, March 31)

Required readings:
Municipal Art Society v. City of New York, 137 Misc.2d 832 (1987)
Board of County Commissioners of Brevard v. Snyder, 627 So. 2d 469 (Florida 1993)
Griswold v. City of Homer, 925 P.2d 1015 (Alaska 1996)

Recommended readings:

XVI) The Politics of Growth Controls (Tuesday, April 5)
Required readings:
Chinese Staff and Workers Association et al. v. Burden et al., 88 AD3d 425 (N.Y. 2011)


Recommended readings:
Lee Anne Fennell, Homes Rule, 112 YALE L.J. (2002).
David Schleicher, City Unplanning. 122 Yale L. J. 7 (2013).

Part IV: Civil Rights in Housing and Land Use Law (5)

XVII) Equal Protection and State Action (Thursday, April 7)

Required readings:
Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Shelley v. Kraemer, 334 U.S. 1 (1948)
Burton v. Wilmington Parking Authority, 365 U. S. 715,

Other resources:
Buchanan v. Warley, 245 U.S. 60 (1917)
Palmer v. Thompson, 403 U.S. 217 (1971)
Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972)
Warth v. Seldin, 422 U.S. 490 (1975)

Recommended readings:

XVIII) Civil Rights and Land Use (Tuesday, April 12)

Required readings:
Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977)
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)

Recommended readings:
XIX) The Fair Housing Act (Thursday, April 14)

Required readings:
The Fair Housing Act
Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979)
US v. Starrett City Associates, 840 F.2d 1096 (2d Cir. 1988)


Other Resources:
NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988)

XX) Competing Conceptions of the Equal Protection’s Mediating Principle: Anti-discrimination v. Anti-domination; Disparate Impact and AFFH Under the Fair Housing Act (Tuesday, April 19)

Required readings:
Texas Dep’t of Housing and Community Affairs v. Inclusive Communities, 576 U.S. 135 (2015)


Other Resources:
Green v. New Kent County, 391 U.S. 430 (1968)
Loving v. Virginia, 388 U.S. 1, (1967)

Recommended readings:

XXI) Fair Lending: CRA, ECOA, HMDA, TILA (Thursday, April 21)
Required readings:
*Bank of America Corp. v. City of Miami*, 581 U.S. 211 (2017)


Recommended readings:

Part V: Local Government Law (3)

XXII) Introduction to Local Government Law (Tuesday, April 26)

Required readings:
*Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907)

Madison, The Federalist (excerpt)
De Tocqueville, Democracy in America (excerpt)

Recommended readings:
Charles Tiebout, A Pure Theory of Local Expenditures, 64 Jour. of Pol. Econ. 5 (1956)
Gerald E. Frug, The City as a Legal Concept. 93 Harv. Law Rev. 6 (1980).

XXIII) Local Government Formation and Powers (Thursday, April 28)

Required readings:
*Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978)


Other Resources:
County Board of Arlington County v. Richards, 434 US 5 (1977)
May v. Town of Mountain Village, 132 F3d 576 (10th Cir)
Wit v. Berman, 306 F.3d 1256 (2d Cir. 2002)
City of Tucson v. Pima County, 190 Ariz. 385 (1997)

Recommended readings:

XXIV) Local Government Powers, Preemption (Tuesday, May 3)

Required readings:
Marshal House, Inc. v. Rent Review and Grievance Board of Brookline, 357 Mass. 709 (1970)
New Mexicans for Free Enterprise v. City of Santa Fe, 138 N.M. 785 (2005)
Town of Telluride v. Lot Thirty-Four Venture, 3 P.3d 30 (Co. 2000)
Cincinnati Bell Telephone Co. v. City of Cincinnati, Ohio (1998)


Other resources:
City of La Grande v. Public Employees Retirement Board 576 P.2d 1204 (Oregon 1978)
Nordlingher v. Hahn, 505 U.S. 1 (1992)

Recommended readings:

XXV) Oral Argument (Thursday, May 5)
XXVI) Oral Argument (Tuesday, May 10)