

Sociology of Law – REVISED 9/2/11
Legal Studies 184 (Fall 2011)
Tuesdays & Thursdays 3:30-5:00

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Office Hours: Mondays 10 AM – 12 PM (sign up), Wednesdays 11 AM – 12 PM (drop in)

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COURSE DESCRIPTION

This course explores sociological understandings of law and legal institutions. We will address questions such as Why do societies have law? What is the relationship between law and social norms or values? Is law a mechanism for coordinating human activity toward the common good, or a vehicle for conflict and oppression? Why do people obey the law, and why do people punish lawbreakers? When does law stabilize society, and when does law promote social change? Is everyone equal under the law or does the law provide more resources to some social groups than to others? Although sociological perspectives are emphasized, this course takes an interdisciplinary approach that also includes psychology, political science, and legal scholarship.

COURSE REQUIREMENTS

	<u>Approximate percent of final grade</u>
Section Participation	20%
Short Essay	20%
Midterm	30%
Final	30%

COURSE MATERIALS

MF&M = Macaulay, Friedman & Mertz, *Law in Action: A Socio-Legal Reader* (2007) (available at the student bookstore).

Gerald N. Stern, *The Buffalo Creek Disaster* (for discussion section)

bspace = Course Readings (available through the course bspace page).

ASSIGNED READINGS

Readings are listed by date on the syllabus and can be found either in the Macaulay, Friedman, & Mertz text or the course readings on bspace. It is important that you keep up with the required reading and you may want to read a bit ahead. From time to time additional readings may be assigned, and/or assigned readings may be omitted. You should read Gerald Stern's *The Buffalo Creek Disaster* for your discussion section (check with your GSI on timing).

DISABILITY ACCOMMODATIONS

If you have a disability that may require accommodations please speak to your GSI early in the semester (i.e. in the first two weeks) to make arrangements.

TARDINESS

Please do not arrive late to class as it is disruptive both to me and to your classmates. Repeated tardiness will result in a lower grade.

CELL PHONES

Please turn off cell phones during lecture and section meetings; this includes text messaging. In addition, cell phones may not be used in any way during exams, including as a watch or time keeper – plan ahead. Failure to comply with this policy will result in a lower grade.

EXAMS

The midterm is **Thursday, October 13 during the regular class period**. The final exam is **Friday, December 16 from 7:00-10:00 PM**.

Out of a concern for fairness to all students, **there will be no make-up exams** except in the case of documented extreme illness. Please mark your calendar now with the exam times so that you are sure that you can be there. If you cannot, you should not take the course this semester.

Exams will consist of some combination of short answer, multiple choice, and essay questions. The mid-term exam will cover Units I and II. The final exam will focus on Units III and IV, but may also include concepts from Units I and II. All exams will begin promptly at the beginning of the class or exam period, and will end at the end of the class or exam period. Students who arrive late must still turn their exams in at the end of the class or exam period. Exams will be closed book and closed notes. Although this should be obvious, it bears stating explicitly: cheating on exams will result in a failing grade for the course.

SHORT ESSAY

The short essay assignment will be posted on bspace on or by October 18, 2011 and will be due in class on November 22, 2011. With the exception of documented extreme illness, **late essays will not be accepted!** If you do not hand in an essay to your GSI by the beginning of the class period (3:40 PM) on November 22, 2011, you will receive zero points for this assignment.

ATTENDANCE

Attendance is required in the sense that exams will be based on both lecture and assigned reading materials. You are responsible for all lecture materials and for any announcements made in class, whether or not you are present. Also, **there will be no additional screenings of the videos presented throughout the semester**. If you miss class on one of these days you should ask a classmate to review their notes from that day. **You are required to attend section meetings**; 20% of your grade is based on section attendance and participation. If you must miss class for a prolonged period due to serious illness, you should speak to your GSI or to me as soon as possible.

OFFICE HOURS

My office hours will be Mondays from 10 AM-12 PM (sign up) and Wednesdays 11AM-12 PM (drop in). Sign-up sheets are posted outside my office; you are welcome to drop in during open time slots if there are any. You should contact your GSI first with questions about course logistics, but feel free to come by during my office hours to discuss course materials or questions, career questions, or anything else. I would prefer that you not drop by my office except during office hours; if you cannot come to my regular office hours please make an appointment. I may on occasion need to change or cancel office hours due to administrative commitments and will provide as much notice as possible of any changes.

August 25: Introduction to Course

UNIT I: THE SOCIAL CONTEXT OF LAW
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QUESTIONS FOR THIS UNIT:

What is the relationship between custom and law?

What is the relationship between social structure and law?

What is the relationship between power and law?

Broadly speaking, what is the relationship between law and society?

August 30: Law and Custom (Cultural Model)

Robert L. Kidder, (1983) "The Origins of Law: Custom," Chapter 3 in *Connecting Law and Society*, pp. 36-57 [bspace]

Paul Bohannon (1973), "The Differing Realms of Law," in Black & Mileski (eds.) *the Social Organization of Law*. New York: Seminar Press, pp. 306-316 [bspace].

Rogers v. American Airlines, Inc. 527 F Supp. 229 [bspace]

Danny Hakim, Thomas Kaplan and Michael Barbaro, "After Backing Gay Marriage, 4 in GOP Face Voters' Verdict" *New York Times*, July 3, 2011 [bspace]

September 1: Law and Social Structure (Structural Model)

Robert L. Kidder (1983), "The Origins of Law: Structure," Chapter 4 in *Connecting Law and Society*, pp. 58-82 [bspace].

Richard Schwartz (1954), "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements," *Yale Law Journal*, 63:471-491 [bspace]

September 6: Law and Social Class (Conflict Model)

Kidder (1983), "The Origins of Law: Conflict, the Critical Perspective," Chapter 5 in *Connecting Law and Society*, Chapter 5, pp. 83-110 [bspace].

Hunt, Alan (1993), "Critical Legal Theory and Marxism," "Legitimation and Legal Ideology," pp. 145-150 in *Explorations in Law and Society: Toward a Constitutive Theory of Law*, New York: Routledge [bspace].

Gabel, Peter & Jay Feinman (1998), "Contract Law as Ideology," pp. 497-510 in D. Kairys (ed.) *The Politics of Law: A Progressive Critique*. New York: Pantheon [bspace].

September 8: Conflict Model continued, and Review

Chambliss, W. J. (1964), "A Sociological Analysis of the Law of Vagrancy," *Social Problems*, 12: 67-77, excerpt from Treviño, A.J. (1996), *The Sociology of Law*, pp. 373-380 [bspace].

E.P. Thompson, (1975), "The Rule of Law," excerpt from *Whigs & Hunters: The Origins of the Black Act*. New York: Pantheon.

Review: "How Does Social Change Affect Legal Change" in MF&M pp186-195

September 13: The Origins of the Law & Society Movement – Law in Action

Treviño, A. Javier (1996) "Chapter 3: The Sociological Movement in Law," pp. 55-75 in *The Sociology of Law* [bspace].

MF&M, Chapter 1, pp. 1-18.

UNIT II: DISPUTING

QUESTIONS FOR THIS UNIT:

What is the process through which disputes emerge?

How and why do people mobilize (or not mobilize) the law?

What are the various modes of dispute resolution?

How do social advantages and disadvantages matter in dispute resolution?

September 15: Legal Mobilization -- Disputes as Social Constructs

Felstiner, William, Richard Abel, and Austin Sarat (1981), "The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming...," *Law and Society Review* 15: 631-654 [bspace].

Bumiller, Kristin (1986), "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," *Signs*, 12:3-16 [bspace]

Albiston, Catherine (1999), "Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights," *Law & Society Review* 39: 11 [introduction, excerpt & notes M,F&M: 541-565].

September 20: Informal Civil Disputing – Bargaining

Macaulay, Stewart (1963), "Non-contractual Relations in Business: A Preliminary Study," *American Sociological Review* 28:55-68 [excerpt and notes MF&M: 75-92].

H. LaurNormence Ross, *Settled Out of Court: The Social Process of Insurance Claims Adjustment*. Excerpt and notes in MF&M pp 92-100.

Mnookin, Robert & Lewis Kornhauser (1979), "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88:950-997 [excerpt & notes in bspace].

September 22: Informal Civil Disputing – Communities and Norms

Ellickson, Robert C. (1986), "Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County," *Stanford Law Review*, 38:623-687.

Sally Engel Merry (1979), "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood" 13 *Law & Society Review* 891. Excerpt and notes in MF&M pp 145-161.

September 27: Power in Disputing

Galanter, Marc (1974), "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change," *Law and Society Review* 9: 95-160 [bspace].

September 29: Power and Culture in Dispute Resolution

September 29: McCann, Michael, William Haltom, & Anne Bloom (2001), "Java Jive: Genealogy of Juridical Icon," *Univ. of Miami Law Review* 56: 113 [excerpt and notes MF&M: 216-251].

Film: Hot Coffee (if available; if not, Justice for Sale)

October 4: Disputing and Dispute Mobilization in Schools

Calvin Morrill, Lauren B. Edelman, Karolyn Tyson, & Richard Arum, "Legal Mobilization in Schools" 44 *Law & Society Review* 651-694 [bspace]

Guest Lecturers: Professors Calvin Morrill and Michael Musheno on *Youth Conflict: Culture and Control in a Multiethnic Urban High School* (book in progress)

October 6: Alternative Dispute Resolution and Informal Dispute Resolution

Edelman, Lauren, Howard S. Erlanger, and John Lande (1993), "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace," *Law and Society Review* 27:497-534 [bspace].

Bryan, Penelope E. (1992), "Killing Us Softly: Divorce Mediation and the Politics of Power," *Buffalo Law Review* 40: 441 [bspace].

October 11: Review

October 13: Midterm Exam (in class)

UNIT III: LEGAL ACTORS AND SOCIAL INEQUALITY

QUESTIONS FOR THIS UNIT:

What roles do various actors play in the legal system?

How do those roles diverge from what the formal model would predict? Okay

How do juries make decisions?

How do judges, lawyers, and juries help to perpetuate or constrain social inequality and social change?

October 18: How Impartial are Judges?

Introduction to section on judges, MF&M: 729-731.

Goldman, Sheldon et al. (2005), "W. Bush's Judiciary: The First Term Record," *Judicature* 88:244 [excerpt and notes MF&M: 731-752].

Cass R. Sunstein, David Schkade, and Lisa Michelle Ellman (2004), "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation." [excerpt and notes in MF&M, 752-777]

Posner, Richard, "What Am I? A Potted Plant?," *The New Republic*, September 18, 1987 [excerpt & notes MF&M: 777-789].

Lauren Edelman, Linda Krieger, Scott Eliason, Catherine Albiston, and Virginia Mellema (2011), "When Organizations Rule: Judicial Deference to Institutionalized Organizational Structures" Forthcoming in *American Journal of Sociology*. Excerpt (pp 1-20) [bspace]

SHORT ESSAY ASSIGNMENT HANDED OUT IN CLASS

October 20: Lawyers and Social Stratification

Richard L. Abel, "The Transformation of the American Legal Profession." In Richard L. Abel (ed.), *Lawyers: A Critical Reader*. New York: The New Press. 1997) [bspace]

Heinz, John P., and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar*. New York: Russell Sage Foundation (1994) Excerpt from *Lawyers: A Critical Reader*, R. Abel, ed. (1997) [bspace].

John M. Conley and Scott Baker, "Fall from Grace or Business as Usual? A Retrospective Look at Lawyers on Wall Street and Main Street." 30 *Law and Social Inquiry* 783 (2005). Excerpt and notes in MF&M pp. 789-827.

Nancy Reichman and Joyce S. Sterling (2004). "Gender Penalties Revisited" in MF&M pp 827-851.

October 25: Juries as Social Conscience

Valerie P. Hans and Neil Vidmar, "Jurors and Juries" Chapter 11 in Austin Sarat, ed. *The Blackwell Companion to Law and Society* (2004) [bspace]

Burnett, D. Graham, "Anatomy of a Verdict: The View from a Juror's Chair," *The New York Times Magazine*, August 26, 2001, Section 6, page 32 [bspace].

Video: Inside the Jury Room

October 27: The Limits of Regulation - Individuals

Tyler, Tom, "Public Mistrust of the Law: A Political Perspective," Univ. of Cincinnati Law Review 66:847 (1998), SECTION IV ONLY [MF&M: 472-474].

Tittle, Charles and Alan Rowe (1983), "Moral Appeal, Sanction Threat, and Deviance: An Experimental Test," *Social Problems* 20:488 [excerpt & notes MF&M: 422-431].

Schultz, Mark F., "Fear and Norms and Rock & Roll: What Jambands Can Teach Us about Persuading People to Obey Copyright Law," *Berkeley Technological Law Journal* 21: 651 (2006) [excerpt & notes MF&M: 431-466].

November 1: The Limits of Regulation - Organizations

Lauren B. Edelman, Sally Riggs Fuller, and Iona Mara-Drita, "Diversity Rhetoric and the Managerialization of Law" 106 *American Journal of Sociology* 1589 (2001). Excerpt and notes in MF&M, pp.270-285.

Mark C. Suchman and Lauren B. Edelman, "Legal Rational Myths: The New Institutionalism and the Law and Society Tradition." 21 *Law and Social Inquiry* 903 (1997). Excerpt and notes in MF&M, pp.521-527.

Mark C. Suchman and Mia L. Cahill, "The Hired Gun as Facilitator: Lawyers and the Suppression of Business Disputes in Silicon Valley" 21 *Law and Social Inquiry* 679 (1996). Excerpt and Notes in MF&M, pp. 861-888.

UNIT IV: LAW, INEQUALITY, AND SOCIAL CHANGE

QUESTIONS FOR THIS UNIT:

What is the relationship between social change and legal change?

How do legal rights matter?

How valuable are legal rights?

How do class, race, gender matter in the legal system?

November 3: Film-The Road to Brown

November 8: Law and Social Change

Lawrence M. Friedman and Jack Ladinsky, "Social Change and the Law of Industrial Accidents" 67 *Columbia Law Review* 50. Excerpt in MF&M pp.195-210.

Zemans, Frances Kahn (1983), Legal Mobilization: The Neglected Role of Law in the Political System," *American Political Science Review* 77:690-703 [bspace].

November 10: Can Law Change Society?

Gerald N. Rosenberg, "Tilting at Windmills: Brown II and the Hopeless Quest to Resolve Deep-Seated Social Conflict Through Litigation. 24 *Law and Inequality* 31 (2006). Excerpt and Notes in MF&M, pp. 600-614.

Michael W. McCann, "Reform Litigation on Trial" 17 *Law and Social Inquiry* 715-743. [bspace]. Read pp 715-719 and 730-741.

November 15: The Rights Debate

Laura Beth Nielsen, "The Work of Rights in the Work Rights Do: A Critical Empirical Approach" Chapter 4 in in Austin Sarat, ed. *The Blackwell Companion to Law and Society* (2004) [bspace]

Mark Tushnet, "An Essay on Rights" (1984) *Texas Law Review*, Part I (The Critique of Rights) [bspace]

Patricia J. Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights." *Harvard Civil Rights-Civil Liberties Law Review* (1987). Part I (A Bit of CLS Mythology) and Part II (A Tale With Two Stories) [bspace]

November 17: Intersectionality

Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" *University of Chicago Legal Forum* 139 (1989) [bspace]

Rachel Best, Lauren B. Edelman, Linda Hamilton Krieger, Scott R. Eliason, "Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation" Forthcoming in *Law & Society Review* (2011).

November 22: Rights Consciousness, Legal Consciousness, and Resistance

David Engel & Frank Munger, "Rights, Remembrance, and the Reconciliation of Difference" 30 *Law & Society Review* 7-54 (1996) [bspace]

Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment" 34 *Law & Society Review* 1055-90 (2000)

SHORT ESSAY ASSIGNMENT DUE

November 24: Thanksgiving Holiday – No Class

November 29: Law and Social Movements

McCann, Michael, "Law and Social Movements," in *The Blackwell Companion to Law and Society* (A. Sarat, ed. 2004), pp 506-522 [bspace].

December 1: Review

FINAL EXAM: Friday, December 16 7:00-10:00 PM